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fendant's contract to purchase land, evidence held insufficient to show any release by complainant.

8. Specific Performance (§ 116½*)—Refusal to Allow Filing of Supplemental Answer.—In suit for specific performance of a contract to purchase land where the land was sold on default of the defendant purchaser and bought in by the vendor for \$1 more than the agreed price, held that, where the vendor was awarded a balance for accruing interest, defendant was not on report of the sale entitled to file a supplemental answer setting up the vendor's possession of land from the time of contract to suit, for notwithstanding Act March 27, 1914 (Laws 1914, c. 331), giving the right of amendment at every stage of proceeding, parties cannot be allowed to try their case piecemeal.

[Ed. Note.—For other cases, see 16 Va.-W. Va. Enc. Dig. 49.]

9. Specific Performance (§ 130*)—Allowance to Vendee of Value of Use of Land by Vendor.—Under the maxim he who seeks equity must do equity, a vendor, seeking specific performance of a contract of the sale of land, who remained in possession from the time of making of contract, etc., until it was judicially sold on default of the purchaser, etc., must account to the purchaser for any profit from occupation as against vendor's claims for interest on the purchase money.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 692.]

Appeal from Circuit Court, Dickenson County.

Suit by Mrs. Alderson against one Davis. From a decree for complainant, defendant appeals. Amended and remanded.

Chase & McCoy, of Clintwood, and *W. A. Daugherty*, of Grundy, for appellant.

A. A. Skeen, of Clintwood, and *C. C. Burns*, of Lebanon, for appellee.

BUCHANAN COUNTY et al. v. W. M. RITTER LUMBER CO.

Sept. 17, 1919.

[100 S. E. 546.]

1. Taxation (§ 378 (3*)—Property of Corporation Constituting Capital Taxable as Such.—Felled timber, railroad ties, and manufactured lumber, belonging to lumber manufacturing corporation, constitutes "capital" of the corporation, and is properly taxable as such.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 964.]

2. Taxation (§ 378 (3*)—Band Saw Mills Taxable as Capital of Corporation.—Band saw mills not permanently attached to the land, but located thereon for the purpose and with the intention of being

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

removed from place to place as the accessible timber should become exhausted was taxable as capital, and not as real estate, under Tax Bill, Schedule C, § 8, subd. 2, as amended by Acts 1916, c. 382, providing, in clause 6, for taxation as capital of "all machinery and tools not taxed as real estate."

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 964.]

3. Taxation (§ 338*)—When Machinery Taxable as Real Estate.—

Machinery is taxable as real estate only when so attached to the freehold as to become part of it, and to become property of owner of the land in absence of stipulation to the contrary.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 103.]

Error to Circuit Court, Buchanan County.

Action between Buchanan County and another and the W. M. Ritter Lumber Company. The circuit court entered two orders, relieving the latter from an alleged erroneous assessment of taxation, and the former bring error. Affirmed.

Jno. R. Saunders, Atty. Gen., J. D. Hank, Jr., Asst. Atty. Gen., E. Warren Wall, of Richmond, F. H. Coombs and Samuel A. Anderson, of Richmond, for plaintiffs in error.

Greever, Gillespie & Divine, of Tazewell, for defendant in error.

BOATRIGHT *v.* LITZ et al.

Sept. 17, 1919.

[100 S. E. 547.]

**Appeal and Error (§ 150 (1)*—Improvident Appeal from Subject-
tion of Land to Judgment.—**Appeal from decree dismissing suit to subject lands to satisfaction of judgment as to one of the defendants, but expressly reserving right to subject any other real estate that might be liable to the judgment, was improvidently allowed, where it did not appear that such defendant's land was primarily subject to the judgment under Code 1904, § 3575, since extent of liability of such land could not be ascertained until the land primarily liable had been sold to satisfy the judgment.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 476; 16 Va.-W. Va. Enc. Dig. 71.]

Error to Circuit Court, Wise County.

Suit by Boatright against J. L. Litz and others. From decree rendered, plaintiff appeals. Appeal dismissed.

*Bond & Bruce and A. M. Vicars, all of Wise, for appellant.
E. M. Fulton, of Wise, for appellees.*

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.